

**MINUTES OF THE MEETING OF THE
BOARD OF DIRECTORS OF THE
DEPARTMENT OF WATERWORKS**

DATE: MARCH 24, 2003

The meeting of the Board of Directors (the "Board") of the Department of Waterworks (the "Department") was called to order at 5:00 p.m. in the Public Assembly Room of the City-County Building. The following Board members were present: Samuel L. Odle, S. Michael Hudson, Barbara Howard, Alan Kimbell and Jack Bayt.

I. Minutes of the Board Meeting of February 26, 2003

The minutes of the February 26, 2003 meeting of the Board (the "Minutes") were submitted by Chairperson Odle for a motion of approval by the Board as set forth in Exhibit A attached hereto and made a part hereof. A motion was made and seconded. The Board unanimously approved the Minutes.

II. Report of the Financial Manager of the Department

The Department's Financial Manager Robert Erney submitted to the Board his report as set forth in Exhibit B attached hereto and made a part hereof (the "Financial Report").

Chairperson Odle asked if the increase in receipts reflects an increase in production. Mr. Erney responded affirmatively.

Mr. Kimbell asked how main extension deposits are compared to last year. Mr. Erney responded that he would obtain this information.

Mr. Hudson asked if the capital allocations of the Financial Report are seasonally based. Mr. Curry responded affirmatively.

Chairperson Odle asked if the accounts receivable balance is correct. Mr. Erney responded affirmatively and that the aging accounts receivable will be further elaborated upon in April.

Mr. Erney reported that the utility receipts tax will be due in April and that it is a new expense. Kobi Wright, Special Assistant Corporation Counsel, stated that the Department is not exempt from that tax however the Indiana state legislature is addressing this tax currently.

III. Report of the Operations Manager of USFIW

James Keene, Operations Manager and President of USFIW, presented his report to the Board as set forth in Exhibit C attached hereto and made a part hereof ("USFIW Report").

Mr. Keene introduced Rosemary Campbell of USFIW to offer an update on call center efforts.

Ms. Campbell stated the new hours are successful. She mentioned the installation of the telephone switch will occur on March 28, 2003 and invited the Board to visit the facility to see the progress at the call center.

Mr. Kimbell asked if USFilter made an arrangement with any lawyer or lobbyist in Indiana for success fees or fees to be paid contingent upon being awarded the management agreement. Mr. Keene responded no.

Chairperson Odle thanked Mr. Keene for his remarks and asked that he convey to USFIW employees the Department's appreciation for their efforts during the severe winter months.

IV. Report of the Director of Contracts and Operations of the Department

Carlton Curry, Director of Contracts and Operations of the Department, presented his report to the Board as set forth in Exhibit D attached hereto and made a part hereof ("Department Report").

Mr. Hudson asked what the rules for rate setting exist for currently unserved areas. Mr. Curry responded that the health department has the authority to condemn wells as it did in Ravenswood and Rocky Ripple and require the Department to serve to those areas. He added that in such instances those affected residents do not necessarily provide full payment for such service but the entire ratebase is affected.

Mr. Hudson asked if there should be a study on the 2000 gallons per minute matter regarding public safety. Mr. Curry responded currently no given that fire departments can obtain pumpers to provide 2000 GPM service. He added that the Department can increase pressure in a specific area with some notice. Mr. Curry added that if the Board choose to replace infrastructure to account for 2000 GPM service, it would cost hundreds of millions of dollars and there are likely to be taste and odor problems.

Chairperson Odle asked why a developer chose to ask for 2000 GPM. Mr. Curry stated the type of building the developer was constructing required 2000 GPM by the fire code. Mr. Hudson questioned if the issue is one of economic development. Mr. Curry responded that developers can choose to construct a 12" main or supplement service with a tank on the property to provide 2000 GPM.

Chairperson Odle asked if the Department is paying for the main extension in Lawrence mentioned in the Department Report. Mr. Curry stated Lawrence will pay for the main extension.

V. Resolution No. 2, 2003- Approval of 2002 Incentive Payments

Mr. Curry summarized Resolution No.2, 2003. Ms. Beulah Coughenour joined the meeting at this point.

Mr. Kimbell asked if the resolution represents that USFIW and the Department concurred on the payments set forth therein. Mr. Curry responded affirmatively. Mr. Kimbell moved for approval of the resolution. Mr. Bayt seconded the motion.

Mr. Kimbell stated that he has reviewed the Department Report concerning incentive payments and has concluded that some of the recommendations therein are based more on form over substance and that some of the disputed incentives should be paid to USFIW. Mr. Kimbell specifically stated that the Department's Report concerning USFIW's lab appear to be off the charts.

The Board unanimously adopted the resolution.

Mr. Bayt asked if the consultants had reviewed the recommended incentive payments. Mr. Curry responded affirmatively.

VI. Resolution No. 3, 2003-Approval of Certain Capital Projects

Mr. Curry summarized the resolution. Mr. Kimbell moved for approval. Mr. Bayt seconded the motion. Chairperson Odle asked about the acquisition capital project. Mr. Curry responded that it adds to the Department's water supply efforts in the northwest side of the city by purchasing this infrasture from the developer. Chairperson Odle asked if we know the items we are acquiring from the developer are in good shape. Mr. Curry responded affirmatively.

Chairperson Odle asked if the Department's agreements address liability if the Department were to find out later that a problem exists with these items. Mr. Wright responded that he has not reviewed the form of the main extension agreement approved by the Board in mid 2002 thus he is not sure if the issue is addressed. He added that given that this is a sale of commercial goods, it is likely to be covered by the Uniform Commercial Code which has implied warranties concerning the sale of goods.

The Chairperson called for a vote. The Board unanimously adopted the resolution.

VII. Resolution No. 4, 2003-Approval of Transfer of Certain Real Estate to the Department of Public Works

Mr. Wright summarized the resolution. Ms. Coughenour moved for approval and Ms. Howard seconded the motion. Chairperson Odle asked how this property became available. Mr. Wright stated that this parcel was acquired as part of a larger parcel in the past by the Indianapolis Water Company ("IWC") for future well use and that IWC subsequently chose to sell significant portions of the larger parcel. Mr. Wright added that the offer to sell the subject parcel was submitted to IWC around the time the city purchased IWC's assets. He stated that the price of the transfer is equal to the offer made to IWC and that he understood that IWC had intended to move forward with this transfer.

Chairperson Odle asked if the Department needs the subject property. Mr. Wright deferred to Mr. Curry. Mr. Curry stated the property is not part of any contemplated growth plans.

Chairperson Odle asked if the property's value needed to be appraised. Mr. Wright responded no because Indiana statutes permit governmental units to transfer real estate at a consideration determined amongst themselves without an appraisal. Chairperson Odle asked if the Board would be meeting its fiduciary duties to the Department to approve the transfer without an appraisal. Mr. Wright responded affirmatively and that there is an ongoing discussion with other city agencies and the Department concerning land transfers and a recognition that bond considerations of the Department precludes it from agreeing to the transfer of land without significant consideration.

Chairperson Odle called for a vote. Chairperson Odle, Ms. Howard, Mr. Kimbell and Ms. Coughenour voted to adopt the resolution. Mr. Bayt voted against the adoption of the resolution.

Mr. Kimbell stated to Chairperson Odle he had an additional agenda item. Chairperson Odle stated that he would like the Board to consider the appointment of Mr. Hudson, Mr. Mutz and Mr. Odle to the coordination committee which addresses any controversies that arise in the management agreement with USFIW. Mr. Kimbell moved in favor of the appointment and Ms. Howard seconded the motion. The Board unanimously voted in favor of the appointments.

Chairperson Odle recognized Mr. Kimbell. Mr. Kimbell asked Glenn Pratt and Dr. Jack Miller to approach the Board. Chairperson Odle stated the Board is not required to receive public testimony and that it would not receive public testimony at this meeting. Mr. Kimbell asked if a person has a concern with the Department does this mean s/he cannot come to the Board meeting and make his/her case.

Mr. Wright responded that the Open Door Law does not confer a right for public comment at this type of meeting and that the law clearly states that the public has a right to observe and record this meeting. He added that has occurred.

Mr. Kimbell asked if the Board could decide whether it wants to hear public comment. Mr. Wright responded that the agenda, pursuant to adopted Board procedures, is

governed by the chairperson therefore the chairperson can determine if public comment is appropriate at a given meeting.

Mr. Kimbell stated ok and reintroduced Dr. Jack Miller. Chairperson Odle stated that the agenda has been completed and that the meeting is adjourned at 6:10 p.m.

Approved this 24th day of March 2003.

Samuel L. Odle, Chairperson

Attest:

S. Michael Hudson,
Secretary-Treasurer